



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0420]

Commercial Driver's License (CDL): New Prime, Inc. (Prime); Application for Exemption Renewal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of provisional renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to provisionally renew a New Prime, Inc., (Prime) exemption from the provisions that require a commercial learner's permit (CLP) holder to be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements seated in the front seat of the vehicle while the CLP holder performs behind-the-wheel training on public roads or highways. The exemption allows a CLP holder who has passed the skills test but not yet received the CDL document to drive a Prime commercial motor vehicle (CMV) accompanied by a CDL holder who is not necessarily in the passenger seat, provided the driver has documentation of passing the skills test. The exemption renewal is for 5 years.

DATES: This renewed exemption is effective June 28, 2022 and expires on June 27, 2027. Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**.]

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2016-0420 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the **Public Participation and Request for Comments** section below for further information.
- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2016-0420) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the **Privacy Act** heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL 14 – FDMS, which can be reviewed at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 385-2415 or by email at MCPD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0420), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number (“FMCSA-2016-0420”) in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption from the Federal Motor Carrier Safety Regulations for a 5-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.”

Prime has requested a five-year extension of the current exemption in Docket No. FMCSA-2016-0420.

III. Background

Current Regulatory Requirements

FMCSA's CDL regulations provide minimum training conditions for behind-the-wheel training of a CLP holder in 49 CFR 383.25. Section 383.25(a)(1) requires that a CLP holder must at all times be accompanied by a CDL holder with the proper CDL class and endorsements. The CDL holder must be seated in the front seat of the vehicle while the CLP holder performs behind-the-wheel training on public roads or highways.

Application for Renewal of Exemption

FMCSA published notice of Prime's initial application for exemption from 49 CFR 383.25(a)(1) to this docket on December 20, 2016 (81 FR 92947). That notice described the nature of Prime's operations. FMCSA published a notice granting Prime's exemption request on June 27, 2017 (82 FR 29143), which expires on June 27, 2022. FMCSA found that Prime would likely achieve a level of safety that was equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation because CLP holders who have passed the CDL skills test are qualified and eligible immediately to obtain a CDL from their State of domicile, and then to start driving without supervision.

Prime requests a renewal of the exemption for a 10-year period. By statute, FMCSA may grant the renewal for no longer than 5 years (49 U.S.C. 31315(b)(2)).

IV. Equivalent Level of Safety

FMCSA determined in 2017 that Prime drivers would likely achieve a level of safety equivalent to, or greater than, the level of safety achieved without the exemption. FMCSA noted in its June 27, 2017, notice that CLP holders who have passed the CDL skills test are qualified and eligible to obtain a CDL. If those CLP holders obtained their

CLPs and training in their State of domicile, they could immediately receive their CDL at the State driver licensing agency and begin driving a CMV without any on-board supervision.

In its March 9, 2022, application for renewal, Prime states that it has not discovered any safety issues while operating under the exemption and that it will continue to monitor its safety data. Prime further states that its “lead seat” trainers commonly own their trucks and are therefore interested in ensuring that the CLP holder operates the CMV safely. In addition, Prime states that once its CLP holders have passed the CDL skills test, they continue into their second phase of training, in which they typically log more than 30,000 miles before becoming a solo driver.

FMCSA is unaware of any evidence of a degradation of safety attributable to the current exemption for Prime drivers. There is no indication of an adverse impact on safety while operating under the terms and conditions specified in the initial exemption or exemption renewal. Furthermore, on two previous occasions the Agency granted a similar exemption, to CRST Expedited [81 FR 65696, September 23, 2016] and to C.R. England [80 FR 33329, June 11, 2015].

FMCSA concludes that provisionally extending the exemption granted on June 27, 2017, for another five years, under the terms and conditions listed below, will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

V. Exemption Decision

A. Grant of Exemption.

FMCSA provisionally renews the exemption for a period of five years subject to the terms and conditions of this decision and the absence of public comments that would cause the Agency to terminate the exemption under Sec. V.F. below. The exemption from

the requirements of 49 CFR 383.25(a)(1), is otherwise effective June 28, 2022, through June 27, 2027, 11:59 p.m. local time, unless renewed or rescinded.

B. Applicability of Exemption

The exemption excuses Prime from the requirement that a driver accompanying a CLP holder must always be physically present in the front seat of a CMV, on the condition that the CLP holder has successfully passed an approved CDL skills test.

C. Terms and Conditions

When operating under this exemption, Prime and its drivers are subject to the following terms and conditions:

- (1) Prime and its drivers must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR part 350-399);
- (2) The drivers must be in possession of a valid State driver's license, CLP with the required endorsements, and documentation that they have passed the CDL skills test;
- (3) The drivers must not be subject to any OOS order or suspension of driving privileges; and
- (4) The drivers must be able to provide this exemption document to enforcement officials.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Notification to FMCSA

Prime must notify FMCSA within 5 business days of any crash (as defined in 49 CFR 390.5) involving any of its CMVs operating under the terms of this exemption. The notification must include the following information:

- (a) Name of the exemption: “Prime”;
- (b) Date of the crash;
- (c) City or town, and State, in which the crash occurred, or closest to the crash scene;
- (d) Driver’s name and license number;
- (e) Vehicle number and State license number;
- (f) Number of individuals suffering physical injury;
- (g) Number of fatalities;
- (h) The police-reported cause of the crash;
- (i) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and
- (j) The driver’s total driving time and total on-duty time prior to the crash.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

F. Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. The exemption will be rescinded if: (1) Prime and drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objects of 49 U.S.C. 31136(e) and 31315.

VI. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Prime, Inc.’s application for an exemption from the requirement

in 49 CFR 383.25(a)(1) that would allow CLP holders who have successfully passed a CDL skills test and are eligible to receive, but have not yet obtained, a CDL to drive a CMV without a CDL holder in the front passenger seat. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Robin Hutcheson,
Deputy Administrator.

[FR Doc. 2022-13709 Filed: 6/27/2022 8:45 am; Publication Date: 6/28/2022]